

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANTHONY EUGENE LEWIS,

Plaintiff,

v.

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, et al.,

Defendants.

No. 2:21-cv-1568-BJR-SKV

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DENYING
PLAINTIFF'S APPLICATION TO
PROCEED IN FORMA PAUPERIS

This matter is before the Court on a Report and Recommendation (Dkt. No. 5) by the Honorable S. Kate Vaughan, U.S. Magistrate Judge, that recommends the denial of Plaintiff Anthony Eugene Lewis's application to proceed *in forma pauperis* (IFP) in this case. Plaintiff has filed objections to the Report and Recommendation. Plaintiff also filed a number of other documents with the Court after the Report and Recommendation was issued.

Applications to proceed IFP are governed by 28 U.S.C. §1915. This statute provides that a prisoner cannot use IFP status to "bring a civil action . . . if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g) ("Section 1915(g)").

1 The Report and Recommendation notes that Plaintiff has previously filed at least four
2 cases while he was incarcerated or in detention that were dismissed as frivolous or for failure to
3 state a claim.¹ Because those four prior dismissals count as “strikes” under Section 1915(g),
4 Plaintiff’s application to proceed IFP must be denied unless his complaint contains plausible
5 allegations that he was under imminent danger of serious physical injury at the time his
6 complaint was filed. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (holding
7 “the availability of the exception turns on the conditions a prisoner faced at the time the
8 complaint was filed, not at some earlier or later time”).

10 Plaintiff’s complaint was filed on November 19, 2021, when Plaintiff was incarcerated at
11 King County Jail. In the Report and Recommendation, Magistrate Judge Vaughan notes that
12 Plaintiff’s complaint includes allegations that he fears reinfection of an unhealed surgical
13 incision on his fingertip; a generalized assertion that another inmate at King County Jail died of
14 COVID-19 in October 2021; and a conclusory allegation that medical and mental health services
15 are inadequate at King County Jail. Magistrate Judge Vaughan concludes that Plaintiff’s
16 application to proceed IFP should be denied because these allegations do not plausibly show that
17 Plaintiff was under imminent danger of serious physical injury at the time his complaint was
18 filed, as required by Section 1915(g).

20 In his objections to the Report and Recommendation (Dkt. No. 6), Plaintiff does not
21 address Magistrate Judge Vaughan’s conclusion that his allegations regarding his fingertip,
22 COVID-19, and the medical and mental health services at King County Jail fail to show that he
23 was under imminent danger of serious physical injury at the time his complaint was filed.
24 Instead, Plaintiff alleges in his objections that he is a victim of “ongoing astral rape/molestation,”
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¹ Plaintiff does not dispute that he has incurred at least four “strikes” under Section 1915(g).

1 which Plaintiff appears to allege is a form of “spiritual” assault.² Dkt. No. 6 at 1. However, these
2 allegations do not plausibly show that Plaintiff faced imminent physical danger at the time his
3 complaint was filed.

4 In his objections, Plaintiff also alleges that on November 30, 2021, he was assaulted by
5 security staff at Western State Hospital for refusing to submit to a coronavirus test and was “hit
6 in the face with a police shield.” *Id.* at 2. However, these allegations concern events that
7 allegedly occurred after Plaintiff’s complaint was filed on November 19, 2021, and after he was
8 transferred from the King County Jail to Western State Hospital. As a result, these allegations do
9 not show that Plaintiff was under imminent danger of serious physical injury at the time he filed
10 his complaint on November 19, 2021, while he was incarcerated at the King County Jail.

12 In addition to his objections to the Report and Recommendation, Plaintiff has filed a
13 number of other documents with the Court. These filings include, but are not limited to, a
14 “motion for additional claims” that raises several allegations about events that have allegedly
15 occurred since Plaintiff was transferred to Western State Hospital on November 30, 2021.³ Dkt.
16 No. 8. Again, however, these additional filings do not demonstrate that Plaintiff was under
17 imminent danger of serious physical injury at the time he filed his complaint on November 19,
18 2021, while he was incarcerated at the King County Jail. Courts have rejected attempts by
19 prisoners to satisfy the “imminent danger” requirement of Section 1915(g) by raising new
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23 ² Plaintiff’s complaint alleges that he has suffered from “spiritual (astral) rape,” as well as “astral” assaults of
24 “voodoo/witch craft/Satanist attacks against my mind and body” Dkt. No. 1-1 at 8. Similar allegations of
25 “astral rape” by Plaintiff in other cases brought in this Court have been found to be insufficient to show “imminent
26 danger” under Section 1915(g). *See Lewis v. King County*, No. C19-797-JCC, Dkt. No. 5 at 3-4; *Lewis v. U.S. West.*
Dist. Court at Seattle, No. C19-1295-MJP-MAT, Dkt. No. 12 at 4; *Lewis v. Western State Hospital*, No. C19-5946-
BHS, Dkt. No. 5 at 7.

³ Plaintiff also filed a motion to amend his complaint to add additional defendants to his existing complaint. Dkt.
No. 15. This filing does not raise new allegations, but seeks to name multiple new defendants to Plaintiff’s
complaint.

1 allegations of events that occurred after the prisoner's original complaint was filed. *See, e.g.,*
2 *Anderson v. Beccara*, No. 1-20-cv-00068-DAD-SAB (PC), 2020 WL 2467413, at *1 (E.D. Cal.
3 May 13, 2020) ("Because the claimed 'new developments' referred to by plaintiff occurred 'after
4 the [original] complaint was filed in this action and involve different individuals at a different
5 prison,' . . . plaintiff is barred by § 1915(g) from relying on those events to assert his earlier,
6 unrelated claims via an amended complaint."); *Lewis v. Huebner*, No. 17-8101 (KMK), 2019
7 WL 1236299, at *4 (S.D.N.Y. Mar. 18, 2019) (noting "the relevant moment in the imminent
8 danger inquiry is when the action is brought, that is, when the initial complaint is filed.").

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10 As a result, the Court finds that Plaintiff has not presented plausible allegations that he
11 was under imminent danger of serious physical injury at the time that his complaint was filed on
12 November 19, 2021. The Court finds and ORDERS as follows:

13 (1) The Court ADOPTS the Report and Recommendation (Dkt. No. 5).

14 (2) Plaintiff's application to proceed with this action *in forma pauperis* (Dkt. No. 1) is
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16 DENIED.

17 (3) Plaintiff is directed to pay the \$402 filing fee within 30 days of the date on which this
18 Order is signed. Failure to timely submit the filing fee will result in termination of
19 this action.

20 (4) The Clerk is directed to send copies of this Order to Plaintiff and to Magistrate Judge
21 Vaughan.
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23 Dated: February 8, 2022

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26 Barbara Jacobs Rothstein
U.S. District Judge